

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY****REGION 6****1445 Ross Avenue  
Dallas, Texas 75202-2733****FEB 15 2005****CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Mr. John Brewster  
President  
Big Cajun 2 Power Plant  
Louisiana Generating, L.L.C.  
P.O. Box 39  
Ventress, LA 70783

Subject: Notice of Violation

Dear Mr. Brewster:

Enclosed is a Notice of Violation ("NOV") issued to Louisiana Generating, L.L.C. pursuant to Section 113(a)(1) of the Clean Air Act, 42 U.S.C. § 7413(a)(1). In the NOV, the United States Environmental Protection Agency ("EPA") notifies Louisiana Generating, L.L.C. of its violations of the pre-construction permitting requirements of the Clean Air Act and the Louisiana State Implementation Plan at its Big Cajun 2 Power Plant in New Roads, Pointe Coupee Parish, Louisiana.

Please note the opportunity to confer outlined in the NOV. As indicated in the NOV, any request to confer should be directed to Evan Pearson, Senior Enforcement Counsel. Mr. Pearson can be reached at (214) 665-8074.

Sincerely yours,

A handwritten signature in black ink, appearing to read "John Blevins", is written over the typed name.

John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

cc: Gary Ellender (Louisiana Generating, L.L.C.)  
William M. Bumpers (Baker Botts L.L.P.)  
Peggy Hatch (LDEQ)

Enclosure

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS**

IN THE MATTER OF:

LOUISIANA GENERATING, L.L.C.  
BIG CAJUN 2 POWER PLANT

POINTE COUPEE PARISH, LOUISIANA

PROCEEDING PURSUANT TO  
SECTION 113 OF THE CLEAN AIR ACT

**NOTICE OF VIOLATION**

This Notice of Violation (NOV) is issued to Louisiana Generating, L.L.C. (Louisiana Generating) for violations of the Clean Air Act (Act), 42 U.S.C. § 7401 *et seq.*, at its Big Cajun 2 Power Plant in New Roads, Pointe Coupee Parish, Louisiana. Specifically, Louisiana Generating has violated Title I of the Act by failing to comply with the Prevention of Significant Deterioration (PSD) requirements of the Act and the Louisiana State Implementation Plan (SIP).

This NOV is issued pursuant to Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1). Section 113(a) of the Act requires the Administrator of the United States Environmental Protection Agency (EPA) to notify any person in violation of a state implementation plan or permit of the violations. The authority to issue this NOV has been delegated to the Regional Administrator of EPA Region 6, and redelegated to the Director, Compliance Assurance and Enforcement Division, EPA Region 6.

**I. STATUTORY AND REGULATORY BACKGROUND**

1. When the Act was passed in 1970, Congress exempted existing facilities, including the coal-fired power plant that is the subject of this NOV, from many of its requirements. However, Congress also made it quite clear that this exemption would not last forever. As the United States Court of Appeals for the D.C. Circuit explained in *Alabama Power v. Costle*, 636 F.2d 323 (D.C. Cir. 1979), "the statutory scheme intends to 'grandfather' existing industries; but ... this is not to constitute a perpetual immunity from all standards under the PSD program." Rather, the Act requires grandfathered facilities to install modern pollution control devices whenever the unit is proposed to be modified in such a way that its emissions may increase.

2. The PSD provisions require preconstruction review and permitting for modifications of stationary sources. Pursuant to applicable regulations, if a major stationary source located in an attainment area is planning to make a major modification, then that source must obtain a PSD permit. To obtain this permit, the source must, among other things, undergo a technology review and install Best Available Control Technology (BACT); perform a source impact analysis;

perform an air quality analysis and modeling; submit appropriate information; and conduct additional impact analyses as required. In the case of a modification that is not major, the source must meet the emission limit called for under the applicable minor new source review (NSR) program in the State SIP. The State of Louisiana has an approved PSD program, L.A.C. 33:III.509.

3. The PSD provisions of Part C of Title I of the Act require preconstruction review and permitting for modification of stationary sources. *See* 42 U.S.C. §§ 7470 - 7492. Pursuant to applicable regulations, if a major stationary source is planning on making a major modification in an attainment area, then that source must obtain a PSD permit. To obtain the required permit, the source must agree to put on BACT.

4. On April 24, 1987, EPA approved a revision to the Louisiana SIP which approved Louisiana's PSD regulation. *52 Fed. Reg.* 13671 (April 24, 1987). Louisiana's PSD program is found at L.A.C. 33:III.509.

5. L.A.C. 33:III.509 provides that no major source or major modification to which the requirements of L.A.C. 33:III.509 apply shall begin actual construction in an area designated as attainment without a permit issued under L.A.C. 33:III.509.

6. L.A.C. 33:III.509 is federally enforceable pursuant to Sections 110 and 113 of the Act.

## **II. FACTUAL BACKGROUND**

7. Louisiana Generating is incorporated under the laws of the state of Delaware, and authorized to do business in Louisiana.

8. Louisiana Generating is a "person", as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), L.A.C. 33:III.111, and within the meaning of Section 113(d) of the Act, 42 U.S.C. § 7413(d).

9. Louisiana Generating is the owner and operator of the Big Cajun 2 Power Plant, a fossil fuel-fired electric utility steam generating plant located in New Roads, Pointe Coupee Parish, Louisiana. The Plant consists of three units, known as Units 1, 2, and 3. Units 1 and 2 are the subject of the NOV. The maximum rated capacity of both Units 1 and 2 is 575 megawatts (MWs). Unit 1 has no controls for sulfur dioxide (SO<sub>2</sub>), and has received a construction permit to install low NO<sub>x</sub> burner technology to reduce NO<sub>x</sub> emissions. Unit 2 has no controls for SO<sub>2</sub> emissions, and installed low NO<sub>x</sub> burner technology to reduce NO<sub>x</sub> emissions in 2004.

10. Construction commenced on Units 1 and 2 in 1976.

11. Units 1 and 2 began operation in 1981.

12. The Plant is located in Pointe Coupee Parish, Louisiana, an area that has the following attainment classifications from 1978 to the present:

For NO<sub>2</sub>: 1978 - present: Attainment/Unclassifiable  
For SO<sub>2</sub>: 1978 - present: Attainment

13. The Plant emits or has the potential to emit at least 100 tons per year of NO<sub>x</sub> and SO<sub>2</sub>, and is a "major emitting facility" as that term is defined in Section 169(1) of the Act, 42 U.S.C. § 7479(1), and a "major stationary source" as that term is defined in L.A.C. 33:III.509.B and 40 C.F.R. § 52.21(b).

### III. FINDING OF VIOLATIONS

14. L.A.C. 33:III.509.I.1 provides that "no major stationary source or major modification to which the requirements of this part apply shall begin actual construction without a permit issued under this Section."

15. Between January 1, 1998 and the date of this NOV, Louisiana Generating made various physical changes or changes in method of operation at the Plant. These changes include, but are not limited to, the following projects:

#### Unit 1 Boiler Projects:

WC4512 - Primary Reheater Elements Replacement (1998)

#### Unit 2 Boiler Projects:

WC4549 - Primary Reheater Elements Replacement (1999)

WE1459 - Primary Heater Replacement (1999)

WE1459 - Waterwall Panel Replacement (1999)

16. The projects identified in Paragraph 15 resulted in "significant net emissions increases" of SO<sub>2</sub> and/or NO<sub>x</sub> from the Plant. L.A.C. 33:III.509.B [40 C.F.R. § 52.21(b)].

17. The projects identified in Paragraph 15 constituted "major modifications", as that term is defined in L.A.C. § 33:III.509.B [40 C.F.R. § 52.21(b)].

18. For each of the modifications listed above that occurred at the Plant, Louisiana Generating failed to obtain a PSD permit(s) pursuant to L.A.C. 33:III.509 (40 C.F.R. § 52.21), or a minor NSR permit(s) pursuant to L.A.C. 33:III.505.

19. None of the modifications listed above fall within the exemptions to the definition of "major modification" found at L.A.C. 33:III.509.B [40 C.F.R. § 52.21(b)(2)(iii)].

20. L.A.C. 33:III.509.R.1 provides that "any owner or operator who constructs or operates a source or modification not in accordance with the terms of any permit issued under this Section, or any owner or operator of a source or modification subject to this Section who commences construction after the effective date of these regulations without applying for and receiving a permit hereunder, shall be subject to appropriate enforcement action."

21. Therefore, Louisiana Generating violated and continues to violate L.A.C. 33:III.509 and/or L.A.C. 33:III.505, by constructing modifications at the Plant without the necessary permit(s) required by the Louisiana SIP.

22. Each of the violations exists from the date of start of construction of the modification and continues until the appropriate PSD or minor NSR permit(s) is obtained, and the necessary pollution control equipment is operated as required by the Louisiana SIP.

#### **IV. ENFORCEMENT**

Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides that at any time after the expiration of 30 days following the date of the issuance of this NOV, the Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the state implementation plan or permit, or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of up to \$27,500 per day for each violation after January 30, 1997, and up to \$32,500 per day for each violation after March 15, 2004.

#### **V. OPPORTUNITY FOR CONFERENCE**

Louisiana Generating may, upon request, confer with EPA. The conference will enable Louisiana Generating to present evidence bearing on the finding of violation, on the nature of the violation, and on any efforts it may have taken or proposes to take to achieve compliance. Louisiana Generating has a right to be represented by counsel. A request for a conference must be made within ten (10) days of receipt of this NOV, and the request for a conference or other inquiries concerning the NOV should be made in writing to:

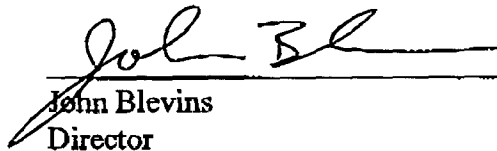
Evan Pearson  
Senior Enforcement Counsel  
Office of Regional Counsel  
U. S. EPA - Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733

If you have any questions, please feel free to call Evan Pearson at (214) 665-8074.

**VI. EFFECTIVE DATE**

This NOV shall become effective immediately upon issuance.

Dated: 2.15.05

  
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John Blevins  
Director  
Compliance Assurance and Enforcement Division  
U.S. EPA - Region 6